IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 654 of 2001
(Old No. 42 of 1997)

Pinakdhali
S/o Jitendradhali
R/o Badri Bakuliya
P.S. Khatima
District Udham Singh Nagar ……Appellant

Versus

State of Uttar Pradesh ……Respondent.

Ms. Nishat Intezar, learned Amicus Curiae for the appellant.
Shri Rajeev Mohan Birkhani, learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J

This appeal, preferred under Section 374 of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.) is directed against the judgment and order dated 05.12.1996, passed by learned Additional Sessions Judge/Special Judge, Nainital is Sessions Trail No. 165 of 1996, whereby accused/appellant Pinakdhali has been convicted under Section 376 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.) and sentenced to rigorous imprisonment for a period of ten years.

2. Heard learned counsel for the parties.

3. Prosecution story in brief is that P.W. 1 Nirod Vishwas, lodged a First information Report with police station Khateema on 18.01.1996, at about 9:40 P.M. that on said date, at about 6:00 P.M. when his daughter Ms. Lakhi alias Lovely, aged 9 years, had gone to jungle near their village Bakulia, accused Pinakdhali, finding her alone, committed rape on her. The victim raised alarm for

help on which wife of informant, rushed for her help along with her son Panchu. When they reached inside the jungle, they found that Ms. Lakhi was lying in an injured condition after she was subjected to rape. The victim was medically examined on 19.01.1996 by the Medical Officer, who prepared the report Ext. A-9, which corroborates that the victim was subjected to rape. The police after investigation, submitted charge sheet (Ext. A-5) against accused/appellant Pinakdhali, for his trial in respect of the offence, allegedly committed by him punishable under section 376 I.P.C.

4. The Magistrate, it appears on receipt of charge sheet after giving necessary copies to the accused committed the case to the Court of Sessions. The Sessions Judge, transferred the case to the Court of Additional Sessions Judge/ Sessions Judge, Nainital, for trail. After hearing the prosecution and the defence, the trial court framed charge of offence punishable under Section 376 I.P.C. against the accused/appellant Pinakdhali, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Nirod Vishwas (informant), P.W. 2 Km. Lovely (victim) and P.W. 3 Pawan Singh (Investigating Officer). The genuineness of the medical reports and other papers were admitted by the defence, as such, the prosecution closed the evidence. The trial court put the oral and documentary evidence to the accused in reply to which he alleged that he has been falsely implicated. However, no evidence was adduced in defence. After hearing the parties, the trail court found accused/appellant Pinakdhali, guilty of offence punishable under Section 376 I.P.C. and

convicted him accordingly. Thereafter, the parties were heard on sentence and rigorous imprisonment for a period of ten years was awarded against the convict. Aggrieved by said judgment and order dated 05.12.1996, this appeal appears to have been filed before Allahabad High Court from where it has been received by transfer to this Court, under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here the relevant portion for the opinion of Medical Officer, as observed in Ext. A-9 after the victim was medically examined:-

1. Hymen torn. Posterior and lateral tears are present.
2. Staining of blood of the vulva and undergarments present.
3. Vagina admits tip of finger but penetration is painful.
4. There are no other stains and marks of injury found on the private parts and other parts of the body.

It appears that while recording report (Ext. A-9) on 19.01.1996, the Medical Officer, referred the victim for X-ray to determine her age. The X-ray report (Ext. A-6), shows that after X-ray, the age of the victim was found to be around eight years.

6. P.W. 2 Ms. Lovely, narrating the prosecution story, has stated that on the day of incident, she was grazing her

cattle in the jungle near her village Bakulia when accused Pinakdhali came and caught hold of her. She further states that he committed rape on her. P.W. 2 Ms. Lovely further states that on her raising alarm, her mother Shefali, and Panchu (her brother), came there and the accused/appellant ran away. The statement of this witness, gets corroboration from the medical evidence, quoted above.

7. P.W. 1 Nirod Vishwas (informant) is father of the victim, who has stated that on the day of incident, his daughter was subjected to rape and when she came back with her mother to the village she was taken to police station and thereafter to the hospital, for medical examination. The witness further states that he lodged the First Information Report (Ext. A-1) with police station Khateema. The First Information Report is a prompt one and there appears no reason to doubt the prosecution story, mentioned in it, which is narrated by the prosecution witnesses, as stated above.

8. P.W. 3 Pawan Singh (Investigating Officer), has stated that he investigated the crime, went to the spot, prepared site plan (Ext. A-3) and interrogated the witnesses. The Investigating Officer, further states that he took into possession garments of the victim and sent the same for scientific examination. The report received from the forensic laboratory is Ext. A-10, which shows that in the clothes of victim, spermatozoa were found. Human blood was also found present. This report further corroborates the prosecution story.

9. From the above-mentioned evidence, this Court is in full agreement with the learned trail court that the prosecution has successfully proved the charge that the accused/appellant Pinakdhali committed offence punishable under Section 376 I.P.C. Since the victim was a minor girl, aged hardly nine years, the sentence of rigorous imprisonment for a period of ten years, awarded by the trail court appears to be just and proper. Therefore, this Court does not feel that the impugned judgment requires any interference.

10. Accordingly, the appeal is dismissed. Conviction and sentence, awarded by the trial court against the accused/appellant Pinakdhali is maintained. From the record, it appears that appellant was in jail not only during the trail but also during the period of appeal and that gives an impression that now the appellant must have served out the sentence. However, if sentence is not served out, the trial court would see that unserved part of the sentence is served.

Dt.03.11.2006 **(Prafulla C. Pant, J.)**
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